



Updates to Michigan's Clean Corporate Citizen Program

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Foster Swift Environmental Law Update

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Michigan's highly successful Clean Corporate Citizen (CCC) program has received new and added emphasis. In late December 2012, the Michigan Legislature passed legislation to organize and enlarge benefits provided by this program to Michigan businesses that exercise environmental stewardship. Aside from providing valuable public recognition for companies that have a "clean" environmental history, adopt environmental policies, and employ environmental management systems, the program has evolved to provide certain regulatory benefits such as expedited permit review for permit applications. The recently enacted legislation has organized and enlarged some of the regulatory benefits by:

- offering free environmental audit training and expert assistance,
- providing priority for permit processing,
- providing preference for state purchases,
- reducing the frequency of MDEQ inspections and providing advance notice of such inspections,
- extending the length of permits, and
- offering immunity from certain violations in certain circumstances.

Specifically, Senate Bill 939 creates Part 14 of the Natural Resources and Environmental Protection Act, as amended, which outlines the basic features of the CCC program. Section 1407 excludes companies from consideration if during the immediate prior three years they:

1. have received criminal convictions of environmental requirements; civil fines, penalties and damages of \$10,000 or more of an environmental requirement; an assessment, consent decree or administrative consent order resulting in a fine or damages of more than \$32,500, excluding a supplemental environmental project; or a determination of illegal action that substantially endangers the public health, safety or welfare or the environment; or
2. have been found to be involved in a pattern of illegal actions by the MDEQ.

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A recipient seeking the CCC determination is required to address any outstanding violations by promptly resolving them, demonstrating that they did not occur; or adhering to a compliance schedule imposed by a government agency to correct the violation.

Section 1409 spells out the qualifying criteria for the designation. These criteria essentially require the adoption of an environmental management system. Section 1411 spells out the requirements for seeking the designation:

1. adopting an environmental policy,
2. establishing a program that posts the environmental policy, conducts periodic assessments, and establishes environmental goals for pollution reduction or prevention, and
3. preparing environmental reports on progress.

Section 1413 requires the application show any criminal convictions or civil fines, penalties and damages over the past three years, a certified statement showing compliance with sections 1407, 1409 and 1411, information on the environmental management system, information about the company's environmental policy, a list of environmental goals, and an indication whether the company is already a CCC.

Section 1413 requires the MDEQ to make a decision within 90 days of receiving an administratively complete application, unless an extension is arranged. According to Section 1415, the designation will last for five years, subject to termination by the MDEQ provided proper notification is given. Also, annual reports will be required 60 days before the annual anniversary of the current designation of the company's clean corporate citizenship.

Under Section 1421, parties, in addition to the public relations aspect of the designation, can receive:

- priority for compliance assistance from the retired engineers technical assistance program,
- priority processing of permits and licenses,
- free audit training by the MDEQ,
- permits that extend twice as long as current permits,
- benefits afforded under the safe drinking water act and public health code,
- 50 percent reduction in MDEQ inspections,
- advance notice of inspections,
- benefits provided by other administrative regulations for such designation, and
- even avoidance of fines for prompt correction of any subsequent violations after discovery and 24 hour or other timely reporting of those violations.

Benefits will not be provided if a facility's conduct creates a substantial endangerment to public health, safety, or welfare or involves an intentional or grossly negligent violation. Previous administrative rules governing the existing clean corporate citizenship program are rescinded by this act.

In addition, Senate Bill 940 amends the Management and Budget Act to include CCC facilities as entities that will be given preference in purchasing decisions the State makes.



Finally, Senate Bills 941 and 942 amend the Public Health Code and Safe Drinking Water Act in order to make them subject to the CCC program.

Foster Swift has helped several clients qualify for this designation in the past. One of our attorneys would be happy to discuss the merits and utility of this environmental stewardship program with you and your company.

